

REMARKS/ARGUMENTS

Amendments

The claims are modified in the amendment. More specifically, claims 1, 2-5, 21, 22, 23, 25 and 31 have been amended; withdrawn claims 6-20 are canceled; and new claims 36-41 have been added. Therefore, claims 1-5 and 21-41 are present for examination. No new matter is added by these amendments. Applicant respectfully requests reconsideration of this application as amended.

Election/Restriction

Newly submitted claims 25-35 were withdrawn from consideration by the Office as being direct to a non-elected invention. Applicants assert that the withdrawn claims largely track amended claims 1-5 and 21-24 and do not present any further search burden. For example, claim 25 compares a first and second images just as does claim 1, and claim 37 compares multiple images as does claim 31. As the Office can appreciate, prosecuting multiple divided applications presents inventors with far greater prosecution and maintenance fee expenses. Thinly funded inventors are often priced-out of the patent system. Reconsideration of the constructive election is respectfully requested.

35 U.S.C. §102 Rejection, Smith et al.

The Office Action has rejected claims 1-5 and 22-24 under 35 U.S.C. §102(b) as being anticipated by the cited portions of non-patent literature document entitled "*Tools and techniques for color image retrieval*" to Smith et al. (hereinafter "Smith"). Smith uses a histogram code to compare images. The amended claims make clear that the claimed code corresponds to annotations that are predetermined. One embodiment of this algorithm is shown in FIG. 12 of the present application. For example, the algorithm may initially find all the images described to include a tree, where "tree" is predetermined. The images that include tree in the annotation would then be image matched. Smith cannot be relied upon to use both image

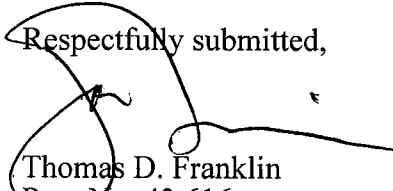
analysis and predetermined annotations in its image matching algorithm. Reconsideration is respectfully requested before applying Smith to reject the amended claims.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,


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